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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.287 OF 2007

Rahim Mohammad Mujawar — Petitioner
versus
Usman Ibrahim Mujawar — Respondent

Mr.D.M.Gupte for petitioner.

CORAM : A.S.OKA, J.

DATE : 18th June 2007

PC :

1. Heard learned advocate for the revision applicant who is the original defendant in a suit filed by the respondent. The challenge in this revision application is to the order dated 23rd April 2007 by which the learned Trial Judge has rejected the application filed by the revision applicant at Exhibit-65. The prayer made in the application at Exhibit-65 is for rejection of the plaint of the respondent at threshold in the light of provisions of Rule 16 of Order VI of Code of Civil Procedure, 1908.

2. The learned counsel for the petitioner

submitted that though the application refers to Rule 16 of Order VI of the said Code of 1908, essentially the application was filed for invoking clause (a) of Rule 11 of Order VII of the said Code of 1908.

3. He submitted that in view of pendency of the earlier suit and in view of the order passed in the Appeal from Order by this Court in the earlier suit, the relief which is claimed in the present suit could not have been claimed by the respondent. He submitted that on this admitted position, the plaint ought to have been rejected.

4. Clause (a) of Rule 11 of of Order VII of the said Code of 1908 is applicable when the plaint does not disclose a cause of action. On perusal of the plaint it is very difficult to say that the suit does not disclose cause of action.

5. Whether the suit filed by the respondent is maintainable or not and whether any relief can be granted to the respondent, are the questions which are required to be decided at the appropriate stage. However, the plaint could not have been rejected on the ground that the same does not disclose a cause of action.

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6. Hence, there is no merit in the revision application and the same is rejected. Notwithstanding rejection of the revision application, it is made clear that all contentions of the petitioner regarding maintainability of the suit are expressly kept open. It will always be open for the petitioner to raise the said contention by filing appropriate proceedings at appropriate stage.

(A.S.OKA, J.)